

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Betty Jane Schwarzkopf,

Complainant,

PROTECTIVE ORDER

v.

City of Big Lake,

Respondent.

The above-entitled matter came on for hearing before Steve M. Mihalchick, Administrative Law Judge, on December 1, 1997. Complainant Betty Jane Schwarzkopf appeared by her attorney, Frank J. Kundrat, Hall & Byers, P.A., 1010 West St. Germain, Suite 100, St. Cloud, Minnesota 56301. Respondent City of Big Lake appeared by its attorney, Patricia Y. Betty, Attorney at Law, 145 University Avenue West, St. Paul, Minnesota 55103-2044.

Complainant seeks the production of the personnel file of the City Administrator, C. Jacobsen, and letters of resignation submitted by several employees. Respondent refused to produce these documents, asserting that the information sought was classified as private data under the Minnesota Data Practices Act (Minn. Stat. Chap. 13)(hereinafter MDPA).

The MDPA classifies the requested data as private under Minn. Stat. § 13. . The provision of the MDPA on discovery of private data states:

Subd. 6. Discoverability of not public data. If a state agency, political subdivision, or statewide system opposes discovery of government data or release of data pursuant to court order on the grounds that the data are classified as not public, the party that seeks access to the data may bring before the appropriate presiding judicial officer, arbitrator, or administrative law judge an action to compel discovery or an action in the nature of an action to compel discovery.

The presiding officer shall first decide whether the data are discoverable or releasable pursuant to the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action.

If the data are discoverable the presiding officer shall decide whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the agency maintaining the data, or of any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data. In making the decision, the presiding officer shall consider whether notice to the subject of the data is warranted and, if warranted, what type of notice must be given. The presiding officer may fashion and issue any protective

orders necessary to assure proper handling of the data by the parties. If the data are a videotape of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse, the presiding officer shall consider the provisions of section 611A.90, subdivision 2, paragraph (b).

Minn. Stat. § 13.03, subd. 6.

The material sought is likely to lead to the discovery of information relevant to the issues in this matter. The benefit to the Complainant in discovering this data outweighs any competing privacy interest. There is no notice required to the former employees whose resignation letters are sought, since the letters are statements by each person to their employer. The City Administrator is aware of this litigation and no notice is required to be given to him regarding the disclosure of his personnel file. The privacy interest of the persons about whom the information is sought can be adequately protected by the issuance of a protective order.

Thus, IT IS HEREBY ORDERED:

That if any private data, as that term is defined by the Minnesota Data Practices Act, is deemed discoverable, the following Protective Order will apply:

1. All such discovery covered by this Order shall not be given, shown, made available, or communicated in any way to anyone other than:

- a. The parties;

b. The attorneys of record for the parties in this litigation, and their office staff who must be shown the information for purposes of this litigation.

c. The Court, if required in any further proceeding herein; and

d. Outside consultants and experts retained by the parties for the purpose of assisting in preparation for trial.

2. Before making disclosure of this data to the parties or outside consultants and experts, agreement in writing (per for the form attached as Exhibit A) must be obtained from these individuals, reciting that he or she has read a copy of the Protective Order and agrees to be bound by its provisions. If the Court requires that the identity of outside experts and consultants be disclosed, a copy of all agreements to be bound which have been executed by such persons shall be furnished to the parties upon request.

3. The discovery covered by this Order shall not be used or communicated by any person receiving it for any purpose whatsoever other than for this litigation.

4. There shall be no reproduction whatsoever of such discovery except that, as required in the litigation, copies, excerpts or summaries may be shown or given to those authorized to receive this data.

5. Discovery covered by this Order, which is required to be filed with the Court, shall be sealed by the Court and shall be available for inspection only by the Court and by those persons authorized by this Order.

6. Information subject to this Protective Order may be referred to by the parties in notices, motions, briefs, or any other pleadings, may be used in depositions and may be marked as deposition exhibits in this action. However, no such information shall be used for any of these purposes unless it, or the portion where it is revealed, is appropriately marked and separately filed under seal with the Court.

7. On final termination of this action, including all appeals, each attorney of record shall be responsible for returning to the opposing attorney the original and copies of all documents which contain information provided during the course of discovery, including all excerpts and summaries thereof, except that each attorney of record may retain all memoranda and correspondence derived from discovered information for purposes of keeping a legal file despite final termination of this action, this Order shall continue to apply to all data covered by this Order.

8. Nothing in this Order shall prevent any party or non-party from seeking a modification of this Order or objecting to discovery which is believed to be otherwise improper.

Dated this day of December 1997.

STEVE M. MIHALCHICK

Administrative Law Judge

EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

The undersigned hereby acknowledge that he or she has received a copy of the Protective Order entered in ***Betty Jane Schwartzkopf v. City of Big Lake***, OAH Docket No. 12-1700-11138-2; MDHR File No. ER 19961701, has read this Protective Order, and agrees to be bound by all the provisions thereof.

Date: _____

Subscribed and sworn to before me

this ____ day of _____, 1997.

Notary Public